In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 867

LELAND A. CHAPPELLE, PETITIONER

v.

DUDLEY C. SHARP, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The order of the district court (R. 9)[1] is unreported. The opinion of the court of appeals (Pet. App. B, pp. 3a–4a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 22, 1961. A timely petition for rehearing was denied on January 15, 1962. The petition for a writ of certiorari was filed on April 12, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] "R." refers to the Joint Appendix filed with the court of appeals below, which is now on file in this Court. The district court made no findings of fact or conclusions of law.

QUESTION PRESENTED

Whether a civil action for reinstatement and back pay filed by a discharged Civil Service employee 34½ months after the exhaustion of his administrative remedies is barred by laches.

STATEMENT

Petitioner was employed by the Department of the the Air Force at Anderson Air Force Base, Guam, M.I., as a civilian firefighter on February 1, 1954 (R. 3). On February 15, 1955, petitioner was removed from that position for cause (R. 3). On December 20, 1956, the Air Force Grievance Review Committee ordered petitioner restored to his position or to one of like seniority, status and pay (R. 4). On February 27, 1957, petitioner was advised that he would be separated from his position, effective March 31, 1957, because of a reduction in force (R. 4). Petitioner appealed the separation order and exhausted his administrative remedies on August 1, 1957 (R. 7).

On June 17, 1960—more than 34 months later—petitioner brought this action against the then Secretary of the Department of the Air Force and the Commissioners of the Civil Service seeking a declaratory judgment expunging all reference to his removal from his employment records, an injunction ordering his reinstatement in the excepted Civil Service, and back pay for the period of his unemployment (R. 2–5). Respondents moved to dismiss the complaint on the ground that petitioner's claim was barred

by laches (R. 6). The motion was accompanied by an affidavit of the Executive Assistant of the Civil Service Commissioners. The affidavit set forth the correspondence between petitioner and the Civil Service Commission and stated that the final administrative action in petitioner's case was taken on August 1, 1957 (R. 6-7). Petitioner opposed the motion on the grounds that the defense of laches could not be raised by motion and that the undisputed facts did not support the claim of laches (R. 8). On the basis of the respondents' affidavit, the court, pursuant to Rules 12(b) and 56 of the Federal Rules of Civil Procedure, treated the motion to dismiss as a motion for summary judgment and granted the motion (R. 9).

On appeal, the court of appeals affirmed, *per curiam*, the order of the district court, holding (Pet. App. B, p. 4a):

> The plaintiff's case was barred by laches. The law on the point was established by *Arant* v. *Lane* [249 U.S. 367, 372] in 1919 and has consistently been applied by the federal courts in many cases since then. * * *

ARGUMENT

There is plainly no occasion for further review by this Court of the determination of both courts below that the action is barred by laches under the principles long ago established by this Court in *Arant* v. *Lane*, 249 U.S. 367, and consistently applied since then.

Neither below nor in his petition in this Court was there any endeavor by petitioner to explain, let alone justify, the almost three year delay in asserting his

claim. Contrary to petitioner's apparent belief (Pet. 10–11), prejudice to the government stemming from a delay of that length is to be presumed. *Arant* v. *Lane, supra,* 249 U. S. at 372. Accordingly, respondents were entitled to summary judgment on the basis of the uncontroverted affidavit which disclosed the date of the final administrative action.

CONCLUSIONS

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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